

Application No. 09/830,778
Attorney Docket No. 021058-0280281
Page 5

REMARKS

I. Status of the claims

Claims 29 and 35-50 are pending. Claims 1-28 and 30-34 have been cancelled, and new claims 35-50 have been presented in this response. Support for new claims 35-50 may be found throughout the specification and in original claims 2-13 and 16-18.

II. Finality of the Office Action

Applicants respectfully submit that the finality of this Office Action is premature and request that the examiner withdrawn the finality of the rejection for the reasons discussed below.

In the present Office Action (mailed November 18, 2004), the examiner has rejected claim 29 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,385,098 to Lindqvist et al. ("Lindqvist"). The previous Office communication (mailed July 13, 2004) was a Restriction Requirement where no claims were rejected. Prior to that communication was an Office Action mailed December 9, 2003 sent by Examiner Henry Blackner. In the December 9, 2003 Office Action, Examiner Blackner rejected claim 34 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,213,392 to Usel ("Usel") and rejected claims 1-9, 11-15, 18, 19, 21-25, and 29-33 under 35 U.S.C. § 103(a) as being unpatentable over Lindqvist in view of Usel. Examiner Blackner did not reject claim 29 under 35 U.S.C. § 102(b) as being anticipated by Lindqvist.

Therefore, since the rejection of 29 under 35 U.S.C. § 102(b) as being anticipated by Lindqvist did not sustain a previous rejection, the rejection must be considered a new ground of rejection. As set forth in MPEP § 706.07(a), a final rejection is improper and premature if the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims or based on information submitted in an IDS. In this case, the § 102(b) rejection was not based a new reference submitted in an IDS, and claim 29, the rejected claim, was not amended. Indeed, claim 29 remains in its original form as of the filing of this response. Therefore, the final rejection is premature and Applicants respectfully request that the finality be withdrawn.

Applicants further note that while claim 29 had been rejected under 35 U.S.C. § 102(b) by Examiner Blackner in an Office Action mailed May 29, 2003, this rejection had since been

30505486v1

Application No. 09/830,778
Attorney Docket No. 021058-0280281
Page 6

withdrawn by Examiner Blackner in the Office Action mailed December 9, 2003. See page 10 of the December 9, 2003 Office Action. This does not, however, change the current situation. A withdrawn rejection that is later reintroduced in a subsequent Office Action becomes a new ground of rejection upon reintroduction; a rejection cannot be sustained after it has been withdrawn.

As the finality of the Office Action is premature, Applicants request entry of the amendments and new claims introduced in this response. See MPEP § 706.07(e) ("When a final rejection is withdrawn, all amendment filed after the final rejection are ordinarily entered."). Additionally, since all pending claims are directed towards an initiating element (Group II, as defined by the examiner in the July 13, 2004 Restriction Requirement), Applicants do not believe that a further restriction of the claims is necessary.

Accordingly, Applicants respectfully request that the examiner withdraw the finality of this Office Action and enter the new claims.

III. Rejection under 35 U.S.C. § 102(b)

The examiner has rejected claim 29 under 35 U.S.C. § 102(b) as anticipated by Lindqvist. As stated above, prior Examiner Blackner previously made this same rejection and later withdrew the rejection. According to Examiner Blackner, the rejection of claim 29 under § 102(b) by Lindqvist was withdrawn because

Lindqvist does not disclose that the initiation portion is comprised of an intimate mixture of the relatively large particle size, porous, powdered explosive and a relatively small particle size, high burn-rate pressurizing initiator located within the interstitial spaces of the relatively large particle size, porous, powdered explosive.

See December 9, 2003 Office Action, page 4. For the same reasons set forth by Examiner Blackner, the outstanding rejection under 35 U.S.C. § 102(b) by Lindqvist should be withdrawn.

Examiner Blackner's conclusions aside, it is nonetheless clear that Lindqvist does not teach Applicants' claimed invention. Specifically, Lindqvist fails to teach an initiating element having an initiation portion containing a high burn-rate pressurizing initiator in the interstitial spaces of the large particle size, porous, powdered explosive, as claimed by Applicants. While the Examiner refers to "figure 2 and column 4 lines 67-68, column 5 line 1, column 6 lines 5-9,

30505486v1

Application No. 09/830,778
Attorney Docket No. 021058-0280281
Page 7

lines 16-35, lines 45-51 and lines 62-64, column 7 lines 1-3, lines 6-13, and lines 28-43, column 8 lines 26-39 and lines 66-68, and column 9 lines 1-5 and lines 41-50," it not shown where in any of these passages that Lindqvist teaches the claimed invention. Since none of these or any other passages of Lindqvist disclose a high burn-rate pressurizing initiator within said interstitial spaces of the powdered explosive, Lindqvist cannot teach the claimed invention.

Indeed, Lindqvist discusses other techniques for combining the "catalyst" and secondary explosive such as:

treating explosive crystals with *catalyst solution or suspension* but ... preferably made by dry-mixing the components, *both suitable fine-grained* as will be described for granulated material...

See column 6, lines 16-20 (*emphasis supplied*). However, at no point does Lindqvist disclose a high burn-rate pressurizing initiator within interstitial spaces of a powdered explosive.

Accordingly, for at least the above reasons, Applicants respectfully request that the examiner withdraw the § 102(b) rejection of claim 29.


IV. Conclusion

If any issues in the prosecution of this application remain unresolved, the examiner is encouraged to contact the undersigned counsel at the number listed below in order to resolve such issues.

Please charge any fees associated with the submission of this paper to Deposit Account No. 033975. The Director is also authorized to credit any overpayments to the above-referenced Deposit Account.

Respectfully submitted,
PILLSBURY WINTHROP LLP

Date: January 18, 2005

By: 
Jeffrey N. Townes
Registration No.: 47,142

P.O. Box 10500
McLean, VA 22102
General Telephone No.: 703.905.2000
General Facsimile No.: 703.905.2500

30505486v1